IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2459 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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HIREN PRAVINBHAI SHAH - Appellant(s)
Versus
ALPESH ASHOKKUMAR BHATT & 2 - Defendant(s)

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Appearance :
MR CC BHALJA for Appellant(s) : 1,
MR RAJNI H MEHTA for Defendant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 03.12.1998 passed by the Motor Accident Claims Tribunal, Panchmahal District Godhra, in M.A.C.T. No. 1092 of 1993 whereby the same was dismissed.

2. The case of the appellant is that the on 09.02.1993 at about 10.30 p.m. the appellant was proceeding on TVS- Suzuki bearing Registration No. GJ-17-A-2961. At that time original opponent No. 1

came in Jeep bearing Registration No. GJ-17-7962 and knocked him down. As a result of this accident the appellant has received bodily injury and fractures . Therefore he has claimed Rs. 97,000/- by way of compensation.

3. The learned advocate for the appellant has submitted that the Tribunal ought to have considered the complaint of Kiritbhai Barot which is registered by Cr. No. 42 of 1993 at Godhra Town Police Station as an Independent Evidence is rejected at Ex. 37 who is also an eye witness.

3.1 He further submitted that the Tribunal should have considered the deposition of Dr. Sanjay Gandhi regarding total disability found by an expert before rejecting the claim.

4. Heard. I have gone through the judgement and award of the Tribunal. While passing the impugned order the Tribunal has observed in para 7 which is reproduced as under:

> “As per the allegation in the petition that the claimant-petitioner Hirenkumar

Pravinbhai was proceeding on Motor-cycle T.V.S. Suzuki No. GJ-17-A-2961 from Panjarapole to his home and the opponent No. 1 came with the Jeep No. GJ-17-7962 with full speed and recklessly and dashed the petitioner's Suzuki from back side and threw away the same which resulted into injuries including fracture on the toes. Thus as per the contentions of the petition due to the negligence of the driver of the jeep the said accident occurred. Now to substantiate this contentions the claimant-petitioner has deposed at Exh. 13 and led documentary evidence and the F.I.R. filed in the Police Station and the Panchnama made by the police in connection of the said incidence by Exh. 19 and 20 respectively. As per the petition the incidence happened on 9/2/93 at 10.30 P.M. while the petitioner proceeding from Panjarapole to his house on TVS Suzuki. In his testimony he has deposed that the incidence took place at about 10-30 P.M. on 18/2/93, as per the F.I.R. filed in the Criminal Case it is given on 18/2/93 and on that date the incidence took place at about 10.00 P.M. As per the averments in the said F.I.R. Hence as per the evidence adduced in the record the incidence took place on 18/2/93. Where as the contentions of the petition the incidence took place on 9/2/93. Therefore it apparent that the evidence adduced on record. So far date of incidence is concerned is totally in variance with the contentions of the petition. Further as per contentions of the petition the Jeep in question came with full speed and recklessly and dashed the petitioner's Suzuki while he was proceeding towards his home from the back side. If the vehicle came from the rear side how could the driver of the Suzuki know about the speed of the vehicle coming from the rear side. Any how it is explicit from the contentions of the petition that the vehicle to be held liable came from the rear side and dashed the petitioner's vehicle. Now on seeing the evidence adduced on record

it transpires from the testimony of the petitioner himself who has received injuries in the accident and who is a direct evidence to the accident in question that on the date of incidence i.e. at 10.30 P.M. on 18/2/93. While he was proceeding to his house by Panjarapole Jeep in question bearing No. GJ-17-7962 came in full speed from the front side and dashed his Suzuki. He has repeatedly said in his chief examination that the Jeep came from the front side i.e. from the opposite direction. He has stated in cross also that the Jeep came from front side and he has also explained Jeep was coming from Panjarapole side. He has also said in his testimony that the Jeep was not on his right side. Thus mean to say that Jeep came on wrong side and dashed him. Either of them could have been on their right side and therefore there could have been no question as to Jeep coming on wrong side. Therefore as per his testimony the petitioner categorically leads evidence about Jeep coming from the front means coming from opposite direction. Now this oral evidence is totally in variance or contrary to the contentions of the petitioner. Since as per the petition the jeep came from the rear side. Even F.I.R. filed in criminal case reveals that the Jeep came from the rear side of the Motorcycle driven by the petitioner-claimant and dashed the Motorcycle and ran away towards Dohad Road. Therefore, the oral evidence is in contrary to F.I.R. filed in Criminal Case, as well as the contentions of the petition in this regard. Even the date of incidence, is stated in variance with the petition. Therefore on considering the above facts there is a total discrepancy in date of incidence as well as the direction from which the Jeep proceeded. Such a discrepancy is not possible since the petitioner is involved in the accident and being a eye witness. Therefore this facts do not inspires confidence to believe the facts

> sought to be proved by the petitioner, such evidence does not inspire confidence in believing the facts as alleged in the petition that the jeep in question came in full speed reckless and dashed the Suzuki driven by the petitioner from the rear side. Even by on perusal of the Panchnama Exh. 20 it transpires that the position of the vehicle i.e. Motorcycle Suzuki was removed and it was not at the place of accident which may tell true story. Hence, in view of the above discussed evidence adduced on record, the said appears to be not sufficient to inspire confidence to believe that the accident was caused due to the rashness or negligence in driving on the part of the driver of the Jeep in question, and therefore the issue No.1 stands not proved. Hence I answer this issue in negation."

Therefore it is clear that the accident has occurred due to rash and negligent driving on the part of the driver of the jeep in question. The applicant has not proved any negligence on the part of opponent No. 1 and therefore liability cannot be fastened on opponents. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

5. In view of the above finding I am of the view that the Tribunal has not committed any error in passing the impugned order. I am in complete

agreement with the reasonings adopted and the findings arrived at by the Tribunal. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*